

CALIFORNIA BOARD OF ACCOUNTANCY

INITIAL STATEMENT OF REASONS

Hearing Date: January 27, 2012

Subject Matter of Proposed Regulations: Retired Status

Sections Affected: Title 16, Division 1, of Article 2.5 in California Code of Regulations, Sections 15, 15.1, 15.2, 15.3, 15.4, and Sections 70, 71, and 87.1.

Legislation enacted in 2011 (Stats 2011, ch. 395 (AB 431)) added Section 5070.1 to the Business and Professions Code effective January 1, 2012 allowing the Board to establish, by regulation, a system for placing a license in a retired status for certified public accountants and public accountants who are not actively engaged in the practice of public accountancy or any activity which requires them to be licensed by the Board. This proposal would implement the requirements for obtaining and maintaining such a license in a retired status. The regulatory proposal is as follows:

1. Adopt New Article 2.5 in Division 1 of Title 16 of the California Code of Regulations.

This proposal would add a new Article 2.5 to Division 1 in the California Board of Accountancy's regulations that would be entitled "Retired Status."

Factual Basis/Rationale:

Existing law currently has no Article in regulations governing the requirements of licensees who wish to place their licenses in a retired status. This proposal would provide for such an Article and allow the Board to organize the requirements in a manner that allows for ease-of-use and reference by licensees.

2. Adopt Section 15 of Title 16 of the California Code of Regulations

Specific Purpose:

This proposal would adopt Section 15 in a newly created Article 2.5 regarding retired status. This proposal would allow a licensee to apply to have their license placed in a retired status. This new article would not prohibit a holder of a license in a retired status from receiving compensation or profits from a public accounting firm provided the licensee does not engage in the practice of public accountancy.

In addition, this proposal states that failure to maintain compliance with this new Article and Sections 5058.3 or 5070.1 of the Business and Professions Code is grounds for discipline.

Factual Basis/Rationale:

The Board has determined that licensees must apply for retired status to ensure that the licensees meet the qualifications set forth in this proposal and in statute. Section 5070.1 of the Business and Professions Code prohibits the holder of a license in a retired status from practicing public accountancy. However, to avoid confusion regarding what the Board considers active “practice”, this proposal would specify that receiving compensation or profits from a public accounting firm is not considered active practice, provided the licensee does not engage in the practice of public accountancy, which is described in Section 5051 of the Business and Professions Code.

The Board must maintain its ability to discipline a license in a retired status as authorized by Section 5109 of the Business and Professions Code. Consequently, this proposal would specify the grounds for disciplining such a license.

3. Adopt Section 15.1 of Title 16 of the California Code of Regulations

Specific Purpose:

This proposal would require a licensee to apply for placing their license in a retired status using Form 11R-48 (11/11) which is incorporated by reference. Form 11R-48 (11-11) would include the following:

- (1) Require disclosure of the name, address of record, license number, email address (optional), personal and business telephone number;
- (2) Require disclosure of whether the applicant intends to practice public accountancy with a license in retired status;
- (3) Require disclosure of whether the applicant is aware of any pending or current enforcement action against his or her license;
- (4) Require disclosure of whether the applicant has held a license as a CPA or PA in the U.S. or its territories for a minimum of 20 total years and then require the applicant to provide the state or territory in which the license was held, the license number and the number of years the license was held;
- (5) Require disclosure of whether the applicant held a CPA or PA license in an active status for a minimum of five years;
- (6) Provide a notice regarding collection and use of personal information given on the application; and,
- (7) Require the applicant to certify his or her statements under penalty of perjury.

The proposal would require a licensee to have held a license as a certified public accountant (CPA) or public accountant (PA) in the United States or its territories for a minimum of twenty years, and that five of those years must have been in an active status as a California licensee. Failure to meet the requirements of this new Article and Section 5070.1 of the Business and Professions Code is grounds for denying the application.

The proposal also would also require the applicant to pay the application fee set forth in proposed Section 70(i)(1).

Factual Basis/Rationale:

The Board has determined that licensees must apply for retired status to ensure that the licensees meet the qualifications set forth in this proposal and in statute. Consequently, this proposal provides that failure to meet the minimum requirements and the applicable provisions of the Accountancy Act is grounds for denial of the application. The qualifications in this proposal, twenty years in the profession including five years in California in an active status, are meant to allow those who have made a significant contribution to the practice of public accountancy, specifically in California, the option of retiring their license. This also allows for a more accurate description of a licensee's status to be reflected on the Board's website for the benefit of consumers.

The foregoing form is necessary to create a process for the Board for review of an applicant's qualifications, to implement the requirements of Section 5070.1, and to assist with providing applicants with a simple method for determining the requirements for seeking retired status from the Board. The certification and disclosure requirements also assist in ensuring accurate and complete information is being provided to the Board prior to making a decision to grant or deny retired status.

4. Adopt Section 15.2 of Title 16 of the California Code of Regulations

Specific Purpose:

This proposal would require the holder of a license in a retired status to continue to renew their license on the same renewal schedule they were on prior to being granted retired status as described in Section 5070.5 of the Business and Professions Code. It exempts a licensee with a license in a retired status from the regular renewal fee and the regular CE requirements.

Factual Basis/Rationale:

The Board has determined that the holder of a license in a retired status should continue to be subject to the Board's biennial renewal cycle. The purpose was so that the Board can maintain contact with its licensees. Such a licensee would be exempt from all renewal fees and CE requirements as they are prohibited from practicing public accountancy.

5. Adopt Section 15.3 of Title 16 of the California Code of Regulations

Specific Purpose:

This proposal would allow the holder of a license in a retired status to restore that

license to an active status at the time of renewal by paying the fee set forth in proposed Section 70(i)(2) and complying with the CE requirements of Section 87 with a minimum of 20 hours of CE in the year prior to renewal and 12 hours in specific subject areas prescribed in existing Section 88(a)(1).

This proposal would allow the holder of a license in a retired status to restore that license to an active status prior to their next renewal date by paying the fee described in proposed Section 70(i)(2) and completing the CE requirements set forth in existing Section 87.1.

Factual Basis/Rationale:

The Board has determined that restoring a license in a retired status to an active status should be similar to converting a license in an inactive status to an active status. To that end, the proposal mirrors the conversion process except for the fee amounts and the fact that this proposal requires a fee when restoring a license outside of the renewal process.

6. Adopt Section 15.4 of Title 16 of the California Code of Regulations

Specific Purpose:

This proposal limits the number of times a licensee may be granted retired status to two.

Factual Basis/Rationale:

The Board has determined that retiring is a process to which much thought must be given as it is meant to be a permanent decision. That said, the Board also understands that situations can arise that are outside of the control of individuals. The Board decided to limit the granting of retired status to two times in order to ensure thought is given to the decision before it is made, and yet maintain some flexibility to all for the unforeseen situations.

In addition, the Board did not want the retired status used as a means of temporarily escaping renewal fees or avoiding other requirements.

7. Amend Section 70 of Title 16 of the California Code of Regulations

Specific Purpose:

This proposal would set the fee for application for a license to be placed in a retired status at \$100.

This proposal would set the fee for restoring a license in a retired status to an active status on a scale based on the time that has elapsed between the retired status being

granted and the time the Board receives a written request for restoration and the restoration fee. The restoration fee begins at \$200 and increases by \$200 for every two years up to the maximum of \$1000.

Factual Basis/Rationale:

The amount of \$100 was selected as the application fee as it is half of the Board's normal renewal fee. It is intended to be the last payment made by a licensee. If however, a licensee desires to return to active status, they are to pay a restoration fee that is based on the amount of time they were retired, up to the statutory cap of \$1000. This amount is set in such a way as to discourage the use of retired status as a temporary status. In addition, the Board did not want the retired status used as a means of temporarily escaping renewal fees that are typically paid by active and inactive licensees

8. Amend Section 71 of Title 16 of the California Code of Regulations

Specific Purpose:

This proposal would add an application for retired status to the list of applications that can be abandoned if the applicant fails to complete the application within two years of its original submission or within one year of notification by the Board of any deficiency in the application.

Factual Basis/Rationale:

If a licensee does not pay the application fee or complete the application process in any way, this will allow the Board to abandon the application after waiting a fixed amount of time. This is necessary to ensure the efficient processing of applications and a fair amount of time to remedy deficiencies uncovered by the Board in the application submission.

9. Amend Section 87.1 of Title 16 of the California Code of Regulations

Specific Purpose:

This proposal would ensure that the CE requirements for restoring a license in a retired status to active status prior to renewal are the same as those for converting a license in an inactive status to an active status prior to renewal.

Factual Basis/Rationale:

The Board has determined that restoring a license in a retired status to an active status should be similar to converting a license in an inactive status to an active status. This proposal makes the restoration CE requirements identical to the current inactive conversion CE requirements.

Underlying Data

Technical, theoretical or empirical studies or reports relied upon (if any):

- (1) Assembly Bill 431 (Stats. 2011, ch. 395)
- (2) Minutes of the May 2011 CBA Meeting.

Business Impact

This regulation will not have a significant adverse economic impact on businesses. This initial determination is based on the following facts or evidence/documents/testimony:

The only possibility of the proposal impacting businesses is if the application or restoration fees are paid for by a business. The CBA assumes that this will be an infrequent occurrence as this is not a normal cost of doing business.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

The Board considered not establishing a retired status. This was rejected because of the desire for such a status from licensees and the more accurate representation of a licensee's status on the Board's website for consumers.